Filed 1/11/19 P. v. Taylor CA1/5

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. FRANCIS TAYLOR, Defendant and Appellant.	A154629 (Contra Costa County Super. Ct. No. 51503747)

This case is before us a second time. After a remand for a reduction of one charge and resentencing on the other counts, the court imposed on appellant Francis Taylor an aggregate prison term of 19 years plus 30 years to life in this eight-count case involving sex crimes against a minor. His court-appointed counsel has filed a brief raising no issues, but seeking our independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) and *Anders v. California* (1967) 386 U.S. 738 (*Anders*). We find no arguable issues and affirm.

I. FACTS AND PROCEDURAL HISTORY

We take judicial notice of our prior opinion in this matter and incorporate the facts stated therein. (*People v. Taylor* (Oct. 30, 2017, A146975.)[1] Briefly, appellant was convicted by a jury of eight counts involving sexual crimes against his niece when she

[1] In a request for judicial notice filed November 29, 2018, appellant asks that we take judicial notice of the transcripts in the prior appeal, case number A146975. (Evid. Code, §§ 452, 459.) We grant the request.

was eight to eleven years old: two counts of aggravated sexual assault (rape) of a child under 14 (Pen. Code § 269, subd. (a)(1), counts 1 & 3),[2] four counts of committing a forcible lewd act on a child under 14 (§ 288, subd. (b)(1), counts 2, 4, 6 & 7), one count of aggravated sexual assault (penetration with a foreign object) of a child under 14 (§ 269, subd. (a)(5), count 5) and attempted commission of a lewd act on a child under 14 (§§ 664/288, subd. (a), count 8). Counts 1 and 2 were committed on one date; counts 3 through 6 were committed on another, count 7 on another date and count 8 on another.

The trial court imposed an aggregate sentence of 27 years plus 30 years to life. In our prior opinion on appellant's appeal from the original judgment, we reversed the conviction of forcible lewd conduct in count 7 based on the omission of an instruction on a lesser included offense and directed the court on remand to modify that count to a conviction of nonforcible lewd conduct unless the district attorney elected to retry that count as charged. We also found the sentence improper in certain respects and remanded the case for resentencing.

On remand, the district attorney accepted the modification of count 7 rather than seeking a new trial on that count. The court resentenced appellant.[3] It found that counts 1 and 2 were committed on separate occasions within the meaning of section 667.6, subdivision (d), despite having been committed near the same time, and that counts 3 through 6 were committed on the same occasion. The court imposed a term of 15 years to life for each of the aggravated sexual abuse (rape) convictions under section 269, subdivision (a)(1) in counts 1 and 3. It imposed a sentence of 15 years to life for the aggravated sexual abuse (digital penetration) conviction under section 269, subdivision (a)(1) in count 5, but ordered that sentence stayed pursuant to section 654 and the parties' stipulation. The court imposed the following determinate sentence: an eight-year upper

---

[2] Further statutory references are to the Penal Code unless otherwise indicated.

[3] The resentencing was held before a different judge than the one who heard the original sentencing hearing, who reviewed the victim's testimony at trial, the Court of Appeal opinion, the investigating detective's testimony regarding the victim's statements to her, the parties' sentencing memoranda, the full transcript of the original sentencing hearing, the probation report and the attached victim impact statement.

term for the forcible lewd conduct conviction under section 288, subdivision (b)(1) in count 2 (a full strength sentence under section 667.6, subdivision (d)); a consecutive eight-year upper term for the forcible lewd conduct conviction under section 288, subdivision (b)(1) in count 4 (the principal term of the sentence under section 1170.1); the six-year middle term, concurrent, on the forcible lewd conduct conviction under section 288, subdivision (b)(1) in count 6; two years consecutive (one third the middle term) for the lewd conduct conviction under section 288, subdivision (a) in count 7; and one year consecutive (one third the middle term) for the attempted lewd conduct conviction under sections 288, subdivision (a) and 664 in count 8. The total aggregate sentence was 19 years determinate, consecutive to the 30 years to life indeterminate term. The court subsequently held a hearing at which it recalculated credits.

II. DISCUSSION

As required by *People v. Kelly* (2006) 40 Cal.4th 106, 124, we affirmatively note that appointed counsel has filed a *Wende/Anders* brief raising no issues, that appellant has been advised of his right to file a supplemental brief, and that appellant did not file such a brief. We have independently reviewed the entire record for potential error and find none.

The charges in this case were committed on four separate dates; two of those dates involve violent sex crimes under section 667, subdivision (d). On resentencing, the court found that Counts 1 and 2 were committed on separate occasions and that Counts 3 through 6 were committed on the same occasion (though on a different occasion than Counts 1 and 2). These findings were supported by substantial evidence. (*People v. Bishop* (1984) 158 Cal.App.3d 373, 381.) The court imposed mandatory full strength consecutive sentences on the counts that were committed on separate occasions and imposed the remainder of the sentence under section 1170.1. (See *People v. Pelayo* (1999) 69 Cal.App.4th 115, 123.) It stated that even if counts 1 and 2 were not committed on separate occasions, it would exercise its discretion to impose full strength consecutive sentences under section 667.6, subdivision (c). (See *ibid*.) It cited three aggravating factors (the degree of violence, planning and having taken advantage of a

position of trust), which supported the imposition of the upper term on counts 2 and 4. (Cal. Rules of Court, rule 4.421(a)(1), (a)(8) & (a)(11).) The sentence fully complied with the law and with this Court's previous opinion in this case.

We are satisfied that appellant's appointed attorney has fully complied with the responsibilities of appellate counsel and that no arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259, 283.)

III. *DISPOSITION*

The judgment is affirmed.

NEEDHAM, J.

We concur.

JONES, P.J.

SIMONS, J.

(A154629)